LING BENG HUI

v.

TENGKU SHAHRANI TENGKU BADAR SHAH & ORS

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABDUL MALEK AHMAD JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: B-02-558 OF 1997]
10 JUNE 1998

CONTRACT: *Construction - Sale and purchase of land - Compulsory acquisition of land by Government - Compensation - Payment out of - Whether to be paid to the appellant*

The parties here had entered into two sale and purchase agreements pertaining to a piece of land measuring 17.9 acres ('the said land'). The facts showed that the first agreement, by way of a sketch layout plan annexed thereto, had sub-divided the said land into Part A, Part B and Part C covering approximately 4.37 acres, 6.44 acres and 7.09 acres respectively. The second agreement, which sought to rescind the first agreement, also had a provision for sub-division of the said land, but its sketch layout plan carried only two parts, namely Part A comprising of 10.81 acres and Part B comprising of 7.09 acres. Following the acquisition by the Government of a portion of the said land, a question arose as to whether the compensation money thereof ought to be paid to the appellant or the respondents. It was common ground that provisions on compulsory acquisition of the said land were incorporated in s. 13.02 of the second agreement, and it was the appellant's contention that the said section, upon its true effect, had intended to convey such compensation money to him, and not to the respondents.

Held:
Per Abdul Malek Ahmad JCA

[1] Comparing the annexed sketch layout plans in the two agreements, it is clear that they refer to the same area and location, except that the 4.37 acres in Part A and the 6.44 acres in Part B of the sketch layout plan in the first agreement has been merged into the 10.81 acres in Part A of the sketch layout plan in the second agreement. Consequently, the 7.09 acres in Part C of the sketch layout plan in the first agreement had become Part B of the sketch layout plan in the second agreement.

[1a] Although the plans were described as sketch layout plans, and the words "approximately" and "about" were used, the figures tallied and there was thus no confusion as to the areas designated. Further, having been annexed to the two agreements and referred to in the affidavits, it was part of the evidence.

[2] Since the area in Part C in the sketch layout plan in the first agreement which became part B in the sketch layout plan in the second agreement had been acquired on 14 April 1994, the area acquired on 25 October 1995 must be in Part A in the sketch layout plan in the second agreement which was originally Parts A and B in the sketch layout plan in the first agreement.

[3] In construing s. 13.02 of the second agreement, it must be stated that since the compensation to be given to the respondents is only for Part B in the sketch layout plan to the second agreement, it need not be handed over to the respondents as the acquisition is clearly for Part A of the sketch layout plan in the second agreement which would rightly go to the appellant.

[Appeal allowed; order accordingly.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Pihak-pihak di sini telah memeterai dua perjanjian jual beli berkaitan sebidang tanah seluas 17.9 ekar ('tanah tersebut'). Fakta menunjukkan bahawa perjanjian pertama, melalui lakaran pelan layoutnya, telah membahagi tanah tersebut kepada Bahagian A, Bahagian B dan Bahagian C yang mengandungi kurang lebih 4.37 ekar, 6.44 ekar dan 7.09 ekar masing-masingnya. Perjanjian kedua, yang membatal perjanjian pertama, juga mengandungi peruntukan untuk pembahagian tanah tersebut, tetapi lakaran pelan layoutnya hanya mempunyai dua bahagian, iaitu Bahagian A yang mengandungi 10.81 ekar dan Bahagian B yang mengandungi 7.09 ekar. Berikutan pengambilan sebahagian dari tanah tersebut oleh Kerajaan, timbul persoalan samada wang pampasan pengambilan tersebut harus dibayar kepada perayu ataupun responden-responden. Peruntukan tentang pengambilan tanah oleh Kerajaan adalah terkandung dalam Fasal 13.02 perjanjian kedua, di mana perayu berhujah bahawa kesan sebenar Fasal tersebut ialah supaya wang pampasan tersebut di bayar kepadanya, dan bukan kepada responden-responden.

Diputuskan:
Oleh Abdul Malek Ahmad HMR

[1] Membanding lakaran pelan layout dalam kedua-dua perjanjian, ianya jelas bahawa pelan-pelan tersebut merujuk kepada tanah dan kawasan yang sama, cumanya tanah 4.37 ekar dalam Bahagian A dan tanah 6.44 ekar dalam Bahagian B dalam lakaran pelan layout perjanjian pertama telah diserap ke dalam tanah 10.81 ekar dalam Bahagian A di lakaran pelan layout dalam perjanjian kedua. Berikutan itu, tanah 7.09 ekar dalam bahagian C lakaran pelan layout perjanjian pertama telah menjadi Bahagian B dalam lakaran pelan layout perjanjian kedua.

[1a] Walaupun pelan-pelan di sini digelar lakaran pelan layout, dan perkataan "approximately" dan "about" digunakan, butir-butir di dalamnya tidak bercanggah dan dengan itu tidak terdapat apa-apa keraguan tentang kawasan yang dimaksudkan. Lagipun, setelah dikepilkan kepada kedua-dua perjanjian dan dirujuk dalam afidavit, ianya sudah menjadi sebahagian dari keterangan.

[2] Oleh kerana tanah dalam Bahagian C lakaran pelan layout perjanjian pertama, yang menjadi Bahagian B lakaran pelan layout di perjanjian kedua, telah diambil pada 14 April 1994, tanah yang diambil pada 25 Oktober 1995 itu adalah termasuk dalam Bahagian A lakaran pelan layout di perjanjian kedua yang asalnya adalah Bahagian-bahagian A dan B dalam lakaran pelan layout dalam perjanjian pertama.

[3] Dalam mentafsir Fasal 13.02 perjanjian kedua, ianya mesti diperkatakan bahawa oleh kerana pampasan yang harus diberi kepada responden hanyalah merangkumi Bahagian B lakaran pelan layout di perjanjian kedua, pampasan di sini tidak perlu dibayar kepada mereka oleh kerana pengambilan yang berkenaan adalah untuk Bahagian A lakaran pelan layout di perjanjian kedua yang mana perayu adalah berhak kepadanya.

[Rayuan dibenarkan; perintah sekadarnya.]

Case referred to:
Wigginton & Milner Ltd v. Winster Engineering Ltd [1978] 3 All ER 436 ***(refd)***

For the appellant - Dr Cyrus V Das (Steven Thiru with him); M/s Shook Lin & Bok
For the respondents - Lim Kean Chye (Edwin Lim with him); M/s Lim Kean Siew & Co

[Appeal from High Court, Shah Alam; Originating Summons No: MT4-24-276-1997]

Reported by WA Sharif

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JUDGMENT

Abdul Malek Ahmad JCA:

The parties had entered into two sale and purchase agreements. The first agreement on 23 December 1993 was rescinded on 12 December 1994 on b which date the second agreement was signed.

What concerns us in particular is s. 1.04 of the first agreement where, under the heading "The Company's Assets", it is stated that the Selangor State Government has agreed to alienate to Perniagaan Sanjung Sdn Bhd (hereinafter c "the company") a piece of vacant land of approximately 17.9 acres (hereinafter "the said land") solely for industrial use being part of three adjoining pieces of land currently known as Lots 2716, 29816 and 2629 in the Mukim and Daerah of Petaling in the State of Selangor as delineated in green in the annexed location plan. Under that agreement, the said land is subdivided in accordance with the annexed sketch layout plan comprising Part A shaded in d red, Part B shaded in blue, and Part C shaded in yellow, totalling approximately 4.37 acres, 6.44 acress and 7.09 acres respectively.

The second agreement had an almost similar s. 1.04 except that this time it is stated that the company is the registered proprietor of all that piece of vacant e land held under an issue document of title H.S.(D) 86220 PT 24517 in the Mukim of Petaling, District of Petaling in the State of Selangor measuring approximately 17.9 acres which shall be subdivided in accordance with the annexed sketch layout plan comprising Part A shaded in red and Part B shaded in blue measuring 10.81 acres and 7.09 acres respectively.

f Comparing the annexed sketch layout plans in the two agreements, it is clear and it cannot be disputed that they refer to the same area and location except that the 4.37 acres in Part A and the 6.44 acres in Part B of the sketch layout plan in the first agreement has been merged into the 10.81 acres in Part A of the sketch layout plan in the second agreement. Consequently, the 7.09 acres g in Part C of the sketch layout plan in the first agreement has now become Part B of the sketch layout plan in the second agreement.

Learned counsel for the appellant, in his usual frank and fluent fashion, started off his submissions by saying that the whole appeal turned on the construction and effect of s. 13.02 of the second agreement which reads: h

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Section 13.02 **Government Acquisition**

(a) The Vendors hereby represent and warrant that they have knowledge of an intended compulsory acquisition by the relevant authorities of Part B of the Said Land under the provisions of the Land Acquisition Act 1966 or any statutory enactment.

(b) In the event that Part B of the Said Land is compulsorily acquired by the Government, the Purchaser shall, upon the expiry of [twenty-one (21) days] after the receipt by the Company of the compensation money (hereinafter referred to as "the Compensation Money") from the Government in connection with such compulsory acquisition of Part B of the Said Land, pay to the Vendors an amount equal to the Compensation Money received by the Company after deducting any tax as may be payable by the Company in connection with such acquisition by the Government. A certificate signed by one of the directors of the company as to the amount of Compensation Money less the tax arising therefrom payable to the Vendors shall be final and binding upon the Vendors.

He referred to Selangor State Government Gazette No. 1528 published on 26 October 1995 which declared the acquisition of 1.749 acres of H.S. (D) 86220 for the Shah Alam Expressway Project Package A where the compensation amounted to RM2.792 million. He added that it cannot be disputed that this is due to the appellant as the area acquired would fall under Part A of the sketch layout plan in the second agreement.

To support his contention that the sketch layout plan annexed and referred to in certain clauses of the agreement is considered part of the agreement, he cited *Wigginton & Milner Ltd v. Winster Engineering Ltd* [1978] 3 All ER 436 where the Court of Appeal in England held that although a plan annexed to a conveyance and described as 'for the purpose of identification only' could not contradict anything which was explicit in the description of the parcels, it could be used to elucidate the identity of the property which the conveyance was intended to convey where it was not made explicit in the description of the parcels. In that case, the true identity of the land which the 1921 conveyance was intended to convey could not be ascertained from the description of the parcels alone. It was clear from the way in which the schedule and the plan were linked in the primary description of the parcels in the body of the conveyance that the numbers in the schedule had to be read as referring to the corresponding numbers on the conveyance plan, where they were all to be found and where they served as a key to relate the description contained in the schedule with that shown on the face of the plan, and further it was clear that the plan was the only means of discovering what the parties intended to be the boundary between the land comprised in lot 795

and the land excluded from lot 795 but which nonetheless formed part of OS 317 on the 1915 ordnance survey map. It followed that in the circumstances the court could refer to the plan in order to determine the extent of land conveyed and therefore was entitled to hold that on the true construction of the 1921 conveyance the disputed land was excluded from it and that it therefore passed to the plaintiffs under the 1972 conveyance.

His argument is fortified, he said, by the earlier acquisition for the same project by the Selangor State Government in their Gazette No. 325 published on 14 April 1994 for 7.623 acres which is 0.533 acres more than Part C of the sketch layout plan of the first agreement corresponding to Part B of the sketch layout plan in the second agreement. As such, the subsequent acquisition on 25 October 1995 gazette notification must be for Part A in the sketch layout plan in the second agreement.

Learned counsel for the respondents, in his trademark laidback manner, argued that there was no evidence to show that the whole of Part B in the sketch layout plan in the second agreement had been acquired. He insisted that one cannot look at the acreage as the plan was merely a sketch layout plan and not a survey plan and all the areas stated were "approximately" or "about". He maintained that as long as the acquisition was for a highway, it must belong to the respondents.

We had compared the two sketch layout plans and could only conclude that although they were described as such and the words "approximately" and "about" were used, the figures tallied and thus there was no confusion as to the areas designated. Further, having been annexed to the two agreements and referred to in the affidavits, it was part of the evidence.

And, since the area in Part C in the sketch layout plan in the first agreement which become Part B in the sketch layout plan in the second agreement had been acquired on 14 April 1994, the area acquired on 25 October 1995 must be in Part A in the sketch layout plan in the second agreement which was originally Parts A and B in the sketch layout plan in the first agreement.

In construing s. 13.02 of the second agreement, we must state that since the compensation to be given to the respondent is only for Part B in the sketch layout plan to the second agreement, it need not be handed over to the respondents as the acquisition is clearly for Part A of the sketch layout plan in the second agreement which should rightly go to the appellant.

Consequently, we allow the appeal with costs here and below and order the refund of the deposit to the appellant.